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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/835,197	04/13/2001	Yvedt L. Matory	HCP-001.01	5350
25181	7590	05/31/2005	EXAMINER	
FOLEY HOAG, LLP PATENT GROUP, WORLD TRADE CENTER WEST 155 SEAPORT BLVD BOSTON, MA 02110			NAJARIAN, LENA	
			ART UNIT	PAPER NUMBER
			3626	

DATE MAILED: 05/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/835,197	MATORY, YVEDT L.
Examiner	Art Unit	
Lena Najarian	3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 13 April 2001.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-18 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-18 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 13 April 2001 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>20010907;20020225</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "104" has been used to designate both "laptop" and "video camera". Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: item 122 (Fig. 2), item 138 (Fig. 3), item 154 (Fig. 4), items 170-178 (Fig. 5), and item 180 (Fig. 6). Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of

an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

3. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because its length is less than 50 words and because of using phrases that can be implied, such as, "The disclosure describes". Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the

applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-15 and 17-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Douglas et al. (6,039,688).

(A) Referring to claim 1, Douglas discloses a graphical user interface for use in a remote patient care system, the graphical user interface comprising (Fig. 37 and col. 2, lines 9-22 of Douglas; the Examiner interprets “electronically deliverable patient therapeutic behavior modification program” to be a form of “remote patient care system”):

a first region depicting patient images received from a remote patient computer having a video camera (Fig. 37, item 214 and col. 19, lines 11-12 of Douglas); and

a concurrently displayed second region presenting a script guiding a user of the graphical user interface through a remote patient session (Fig. 37, item 216 and col. 17, lines 12-20 of Douglas; the Examiner interprets “instructions” to be a form of “a script guiding a user”).

(B) Referring to claim 2, Douglas discloses wherein the script comprises a script selected for a patient based on the patient's condition (col. 7, lines 23-37 of Douglas).

(C) Referring to claim 3, Douglas discloses wherein the script comprises a script including conditional logic (Fig. 60 and col. 2, lines 30-47 of Douglas; the Examiner interprets “using this input, the system can recommend a plan” to imply the use of “conditional logic”).

- (D) Referring to claim 4, Douglas discloses wherein the script comprises a script including instructions for presenting graphical user interface controls (col. 15, lines 46-50 and Fig. 37 of Douglas; the Examiner interprets "button" to be a form of "control").
- (E) Referring to claim 5, Douglas discloses wherein the script comprises a script downloaded from a networked computer (col. 12, lines 11-21 and col. 19, lines 3-10 of Douglas; the Examiner interprets "message" to be a form of "script").
- (F) Referring to claim 6, Douglas discloses a third region presenting patient information collected by instrumentation other than the video camera (Fig. 37 and col. 9, lines 27-38 of Douglas; the Examiner interprets "devices" to be a form of "instrumentation").
- (G) Referring to claim 7, Douglas discloses wherein the information comprises vital sign values (col. 6, line 64 – col. 7, line 8 and col. 17, line 64 - col. 18, line 5 of Douglas).
- (H) Referring to claim 8, Douglas discloses a method of remote patient care, the method comprising:
- collecting data reflecting operation of a remote patient care system that delivers one or more images of a patient to a care provider's computer over a network, the remote patient care system handling patients based on parameters (col. 1, lines 62-66 and col. 13, lines 41-48 of Douglas; the Examiner interprets "video conferencing" to be a form of "delivers one or more images of a patient to a care provider's computer");
- analyzing the collected data; and
- adjusting the parameters based on the analyzed collected data (col. 2, lines 23-47 of Douglas).

- (I) Referring to claim 9, Douglas discloses wherein the collected data reflecting operation of a remote patient care system comprises data describing a patient outcome (col. 20, lines 38-47 of Douglas).
- (J) Referring to claim 10, Douglas discloses wherein the collected data reflecting operation of a remote patient care system comprises data describing health care costs (col. 19, lines 33-39 of Douglas).
- (K) Referring to claim 11, Douglas discloses wherein the collected data reflecting operation of a remote patient care system comprises data describing patient satisfaction (col. 13, lines 59-64 of Douglas).
- (L) Referring to claim 12, Douglas discloses wherein the collected data reflecting operation of a remote patient care system comprises data collected from different health care sites (col. 15, lines 1-4 of Douglas).
- (M) Referring to claim 13, Douglas discloses wherein handling patients comprises determining patient eligibility for remote care (col. 19, lines 58-65 of Douglas).
- (N) Referring to claim 14, Douglas discloses wherein handling patients comprises determining a remote care schedule for a patient (col. 2, lines 53-59 of Douglas).
- (O) Referring to claim 15, Douglas discloses wherein the parameters comprise thresholds (col. 2, lines 23-27 of Douglas; the Examiner interprets “goals” to be a form of “thresholds”).
- (P) Referring to claim 17, Douglas discloses wherein the network comprises the Internet (col. 21, lines 35-41 of Douglas).

(Q) Claim 18 differs from method claim 8 by reciting “a computer program product, disposed on a computer readable medium” and “the computer program includes instructions” within its preamble. As per these elements, Douglas’s system recites the usage of CD-ROM, DVD disk, and downloads to the user’s computer hard drive, or any other method or medium capable of storing or transmitting data (col. 12, lines 11-21 of Douglas). As such, it is readily apparent that Douglas’s system is controlled by a computer program disposed on a computer readable medium.

The remainder of claim 18 repeats the same limitations of method claim 8, and is therefore rejected for the same reasons given above for claim 8, and incorporated herein.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Douglas et al. (6,039,688) in view of Chasalow et al. (5,130,256).

(A) Referring to claim 16, Douglas discloses wherein the patients comprise post-operative cancer patients (col. 1, lines 24-32 of Douglas; the Examiner interprets “recovering from a surgical procedure” to be a form of “post-operative”).

Douglas does not disclose wherein the patients are breast cancer patients.

Chasalow discloses breast cancer patients (col. 1, lines 43-46 of Chasalow).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify Douglas's system to specifically include breast cancer patients as its user. The motivation for doing so would have been to provide a system for the approximately 200,000 women who develop breast cancer each year (col. 1, lines 12-15 of Chasalow).

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited but not applied prior art teaches a computerized medical diagnostic and treatment advice system including network access (6,022,315) and a disease management system and method (US 6,234,964 B1).

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lena Najarian whose telephone number is (571) 272-7072. The examiner can normally be reached on Monday - Friday, 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on (571) 272-6776. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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